

COURT OF APPEALS OF TEXAS, EIGHTH DISTRICT, EL PASO

John Melvin Foster, Jr. v. the State of Texas

Foster v. State · No. 08-22-00181-CR · Decided January 18, 2023

SUMMARY

The Eighth District Court of Appeals ordered the trial court to conduct a hearing concerning whether the appellant wished to continue the appeal and whether he had been deprived of a reporter's record. The order also set deadlines for transmitting the trial court's findings, a supplemental clerk's record, and the reporter's record.

CASE DETAILS

COURT	Court of Appeals of Texas, Eighth District, El Paso
WRITING FOR THE COURT	Per Curiam; Rodriguez, C.J.; Palafox, J.; Soto, J.
JURISDICTION	Texas
DECIDED	January 18, 2023
DOCKET	08-22-00181-CR
DISPOSITION	other
PROCEDURAL POSTURE	Interlocutory appellate order addressing the absence of the reporter's record in a criminal appeal.
PRECEDENTIAL VALUE	Published procedural order with limited substantive precedential value.
PARTIES	John Melvin Foster, Jr. v. the State of Texas

TOPICS

appellate procedure

criminal procedure

PRACTICE AREAS

criminal appellate procedure

QUESTIONS PRESENTED

1. What procedural steps should be taken when the reporter's record has not been filed in a criminal appeal?

KEY QUOTATIONS

“Therefore, it will be necessary for the trial court to conduct a hearing.” (Order)

“The trial court shall forward its findings to the District Clerk of Reagan County, Texas, on or before February 7, 2023.” (Order)

FACTUAL BACKGROUND

The reporter's record in Appellant's criminal appeal had not been filed by the applicable deadline. After an extension and a denied third request by the official court reporter, the appellate court determined that a trial-court hearing was necessary to address Appellant's desire to continue the appeal and any deprivation of the reporter's record.

PROCEDURAL HISTORY

The reporter's record was due on December 17, 2022, and a second extension had been granted. The court reporter filed a third request for additional time on December 19, 2022, which the appellate court denied. Because no reporter's record had been filed, the appellate court ordered the trial court to conduct a hearing concerning whether Appellant wished to continue the appeal and whether Appellant had been deprived of a reporter's record.

DISPOSITION

other

REMAND INSTRUCTIONS

The 112th District Court must conduct a hearing to determine whether Appellant wishes to continue the appeal and whether Appellant has been deprived of a reporter's record. The trial court must forward its findings to the District Clerk of Reagan County by February 7, 2023. The District Clerk must prepare and forward a supplemental clerk's record containing those findings to the appellate court by February 17, 2023. The trial court reporter must also prepare, certify, and file the record of the trial-court proceedings with the appellate court by February 17, 2023.

OPINION

PER CURIAM.

COURT OF APPEALS EIGHTH DISTRICT OF TEXAS EL PASO, TEXAS § JOHN MELVIN FOSTER, JR., § No. 08-22-00181-CR Appellant, § Appeal from the v. § 112th District Court THE STATE OF TEXAS, § of Reagan County, Texas State. § (TC# 02013) § ORDER The reporter's record was due to be filed on December 17, 2022, with a second request being granted until such time.

On December 19, 2022, Elizabeth Lusk, Official Court Reporter for the 112th District Court of Reagan County, filed a third request which was denied. As of this date, no reporter's record has been filed. Therefore, it will be necessary for the trial court to conduct a hearing.

Therefore, it is ORDERED that the trial court conduct a hearing to determine whether Appellant wishes to continue the appeal and whether Appellant has been deprived of a reporter's record. The trial court shall forward its findings to the District Clerk of Reagan County, Texas, on or before February 7, 2023.

The District Clerk shall prepare and forward a supplemental clerk's record containing the trial court's findings and forward the same to this Court on or before February 17, 2023. Further, the trial court's reporter shall prepare, certify, and file the record of the trial court proceedings with this Court on or before February 17, 2023. IT IS SO ORDERED this 18th day of January, 2023.

PER CURIAM Before Rodriguez, C.J., Palafox and Soto, JJ.